

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

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4 **MARK T. DUBLINO,**

5 Plaintiff,

6 -vs-

Case No: 19-CV-6269

7 **SGT. JUSTIN BIEGAJ, SGT. ROBERT DEE,**
8 **DEPUTY BRIAN THOMPSON, DEPUTY FRANK GELSTER,**
9 **SGT. MR. CROSS, SGT. MR. ROBINSON,**
10 **DEPUTY MR. P. GIARDINA, DEPUTY SHAWN WILSON.**

11 Defendants.
12 -----

13 Virtual Examination Before Trial of
14 **MARK T. DUBLINO,** held pursuant to Article 31 of the
15 Civil Practice Law and Rules, commencing on Monday,
16 June 7th, 2021 at 10:00 A.M., before Denise C.
17 Burger, Notary Public.
18
19
20
21
22
23

1 APPEARANCES: **MODICA LAW FIRM:**
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9 **MICHAEL A. SIRAGUSA, ESQ,**
10 **ERIE COUNTY ATTORNEY**
11 BY: **ERIN E. MOLISANI, ESQ.,**
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E X H I B I T S

EXHIBIT NO:

PAGE

1. Disciplinary Report.

4

2. Medical records.

4

1 (The following were marked for identification)

2 Exhibits 1 & 2.

3

4 The following stipulations were entered into by
5 counsel:

6

7 It is hereby stipulated by and between the
8 attorneys for the respective parties hereto that
9 the oath of the Referee is waived, that signing,
10 filing and certification of the transcript are
11 waived and that all objections, except as to the
12 form of the questions, are to be reserved until the
13 time of trial.

14

15 **MARK DUBLINO,**

16 having been first duly sworn, was examined
17 and testified as follows:

18

19 THE REPORTER: Can you state your name for
20 the record, please.

21 THE WITNESS: Mark Dublino.

22

23

MR. DUBLINO - MS. MOLISANI - 6/7/2021

5

1 EXAMINATION BY MS. MOLISANI:

2 Q. Good morning, Mr. Dublino, how are you?

3 A. Good morning.

4 Q. We have met before, but for the record,
5 my name is Erin Molisani and I represent the
6 deputies and sergeants that you started a claim
7 against.

8 So as you know, we're here today to discuss
9 an incident that occurred on March 9th, 2018 and
10 ask you some questions. So I think -- just let me
11 know when you're ready.

12 A. Yes, go ahead.

13 Q. Okay, just the noises, it makes it sort
14 of difficult, so -- is there anyone else in the
15 room with you presently?

16

17 (Technical difficulties.)

18 (Whereupon, a short recess was taken.)

19

20 BY MS. MOLISANI:

21 Q. Mr. Dublino, can you just repeat the
22 answer that you said that the court reporter wasn't
23 able to catch, about whether --

MR. DUBLINO - MS. MOLISANI - 6/7/2021

6

1 A. I am sorry, you want me to repeat the
2 question?

3 Q. I will just repeat the question. Is
4 there anyone in the room with you presently?

5 A. Yes, my counselor, Ms. Cabrerra.
6 Officer Ers. And Officer Ers. Ms. Ers and Ms.
7 Cabrerra.

8 Q. Okay, thank you. And you have a number
9 of documents in front of you presently, are those
10 pleadings related to this lawsuit?

11 A. I am sorry?

12 Q. You have a number of documents and
13 materials in front of you, are those pleadings
14 related to this lawsuit?

15 A. Pleadings?

16 Q. Yes.

17 A. No, they're not pleadings.

18 Q. Okay. What is in front of you?

19 A. I -- just names. Names of the
20 officers.

21 Q. Okay, it looks like --

22 A. The officers.

23 Q. Okay, the officers involved in this

MR. DUBLINO - MS. MOLISANI - 6/7/2021

7

1 incident?

2 A. Yeah, I have the names of the officers
3 in case I need that, you know, to remember a name,
4 you know, because it's been so long, but I have a
5 pretty good grasp of everything. Go ahead.

6 Q. All right, it looks to me you have two
7 to three separate stacks of papers, so can you
8 elaborate on what you're looking at?

9 A. Well, one is a sick call request. One
10 are felony complaints. One is the letter to Modica
11 Law Firm. One is the letter from the Modica's Law
12 Firm confirming the depositions that are scheduled
13 for the rest of the week that I am going to be
14 excluded on. I don't know why I would be excluded,
15 but I am being excluded. And something about
16 justification.

17 Q. Okay. Would you just do me a favor and
18 if you need to look at the documents in front of
19 you, would you let me know that you intend to do
20 that?

21 A. Okay, very good.

22 Q. Thank you. And you're presently
23 incarcerated; is that correct?

MR. DUBLINO - MS. MOLISANI - 6/7/2021

8

1 A. Yes, I am.

2 Q. And you're at Wende?

3 A. I am at Wende Correctional Facility.

4 Q. Okay. I know you have been through a
5 couple of depositions. We have been through a
6 couple depositions together, but allow me, if you
7 would, to just remind you of a couple of
8 suggestions to hopefully make things go smoothly
9 from here on out, okay? Yes?

10 A. Yes.

11 Q. That's one of them, is if you could do
12 a verbal response, because a head shake isn't going
13 to be able to be transcribed, okay?

14 A. Correct.

15 Q. Great. I'll try to do my best,
16 particularly since we're proceeding on Webex, to
17 wait until the end of your response before I give
18 you a question. If you could do your best to wait
19 until the end of my question before you give an
20 answer, okay?

21 A. Very good.

22 Q. Are you -- can you hear me okay?

23 A. I am -- that's better.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

9

1 Q. All right. I will try to speak up, but
2 please, obviously let me know if you can't hear my
3 question, okay?

4 A. In fact, if I don't understand it, I'll
5 ask you to repeat it.

6 Q. And if you can't hear me.

7 A. Right. Right.

8 Q. Okay. So I previously deposed you
9 relative to the lawsuit against Mr. Thomas, so I
10 have the benefit of having gone through some of the
11 background information with you about marital
12 status and things like that, so I am going to skip
13 over most of that and just kind of update things
14 since the last time I took that deposition, which I
15 think was the fall of 2019, does that sound right
16 to you?

17 A. August '19?

18 Q. I said fall 2019?

19 A. 2018 August is the last time you
20 deposed me?

21 Q. No, I said the fall of 2019; is that
22 your recollection?

23 A. Fall of 2019 what?

MR. DUBLINO - MS. MOLISANI - 6/7/2021

10

1 Q. Was the last time that I took your
2 deposition relative to the Dublino versus Thomas
3 lawsuit?

4 A. I don't recall, but I remember we did
5 depositions on that particular occasion.

6 Q. All right. Well, I guess since then
7 have you been -- have you gotten married?

8 A. I have not.

9 Q. Have you obtained any additional
10 education since then in October 2019?

11 A. No, just normal law library access to
12 learning the -- learning about litigation.

13 Q. Okay. And you were reconvicted in
14 April of 2021 after a bench trial in Erie County;
15 is that correct?

16 A. That is correct.

17 Q. All right. And what were the specific
18 crimes that you were convicted of?

19 A. I was -- I was convicted of Penal Law
20 120.05-7.

21 Q. Do you know what the name of that,
22 what the charge was?

23 A. It is assault -- assault in the -- in a

MR. DUBLINO - MS. MOLISANI - 6/7/2021

11

1 correctional facility.

2 Q. Do you intend to appeal that
3 conviction?

4 A. I am working on it, that's CPL 333
5 right now, to set it aside based on legal
6 insufficiency and the other, which is just
7 referring to that, it's not only was legal
8 insufficiency, but the evidence was -- I guess the
9 weight of the evidence.

10 Q. Okay. What was the document you looked
11 at just now?

12 A. I just looked at a case cite, Jennifer
13 Marshan, which outlines that as a case that was
14 determined over here on the Fourth Department.

15 Q. Okay. And that conviction was the
16 result of an assault on Joe Terranova on March 9th,
17 2018; is that correct?

18 A. Yes, it is.

19 Q. Since the last time you were deposed in
20 October 2019, have you been convicted of any other
21 crimes?

22 A. No, I have not.

23 Q. And have you been exclusively

MR. DUBLINO - MS. MOLISANI - 6/7/2021

12

1 incarcerated at Wende and Auburn since October
2 2019?

3 A. I -- my incarceration was started in
4 March of 2018 at Elmira Correctional Facility. In
5 April I went to Auburn Correctional Facility of
6 2018, and I stayed there until October 29th of 2018
7 at Auburn and then I was transferred over to
8 Wende --

9 Q. Okay.

10 A. -- in 2020.

11 Q. Are you currently working at Wende in
12 any capacity?

13 A. I have hall squad duty.

14 Q. What is it?

15 A. Hall squad duty is what my job
16 classification is. When they call me.

17 Q. So what do you do?

18 A. It's just a basic maintenance type of
19 stuff that's done on the company that you're at,
20 like garbage and making sure everything is clean.
21 Clean and tidy.

22 Q. Okay. When you were housed at the Erie
23 County Correctional Facility, did you receive a

MR. DUBLINO - MS. MOLISANI - 6/7/2021

13

1 copy of the inmate handbook?

2 A. At the Erie County Holding Center?

3 Q. Yes.

4 A. I received a copy of the inmate
5 handbook, yes.

6 Q. So turning to the incident that brings
7 us together here, it's my understanding that it
8 happened on March 9, 2018 at approximately 10:20 in
9 the morning; is that accurate?

10 A. Approximately at 10:20, yes.

11 Q. Okay. And what -- and it occurred in
12 or around an attorney-conference room; is that
13 right?

14 A. That is correct, attorney-conference
15 room 3.

16 Q. Can you describe the room for me,
17 please?

18 A. The room was a little bit larger than
19 seven-by-seven. Seven feet by seven feet.

20 Q. Okay. And what's inside --

21 A. Seven-and-a-half-feet by
22 seven-and-a-half-feet.

23 Q. And what's inside the room?

MR. DUBLINO - MS. MOLISANI - 6/7/2021

14

1 A. A table and three chairs.

2 Q. And what's the door set -- excuse me,
3 the door setup for the attorney-conference room?

4 A. Well, how could I explain this. You
5 had one door entering and exiting from the corridor
6 from the -- hold on one second, there's a phone
7 ringing here on my end.

8 Q. Okay.

9
10 (Whereupon, a short recess was taken.)

11

12 BY MS. MOLISANI:

13 Q. I think when the phone rang you were
14 describing the doors that are in the
15 attorney-conference room?

16 A. Okay, the -- it's a seven by -- a
17 little more than seven-and-a-half by
18 seven-and-a-half attorney room and they have two
19 doors, one that enters from the corridor from the
20 person who is being held in custody, and then
21 there's a door that enters and exits from the
22 attorney entrance.

23 Q. Okay.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

15

1 A. They're approximately three feet wide.

2 Q. All right. So the claim of excessive
3 force that you made against --

4 A. I'm sorry.

5 Q. The claim of excessive force that you
6 have made against deputies and sergeants in this
7 case, did that occur on the attorney side door or
8 the inmate side door?

9 A. It happened on the -- the person held
10 in custody, on that corridor side, which was my
11 side.

12 Q. The inmate side?

13 A. Where I enter and where I exit.

14 Q. Great. Okay, and am I correct, if
15 you're inside the room, you cannot open the door
16 yourself, is that right, you have to be let out
17 from someone in such control?

18 A. Yes, there is an electronic release
19 that's controlled by the control room officer.

20 Q. Okay.

21 A. That's correct.

22 Q. And are those rooms exclusively for
23 meeting with attorneys, to your knowledge?

MR. DUBLINO - MS. MOLISANI - 6/7/2021

16

1 A. They are exclusively for attorneys from
2 my knowledge.

3 Q. Are there rules governing your conduct
4 in those rooms, to your knowledge?

5 A. No, I have never saw any rules for
6 conduct.

7 Q. So on March 9, 2018, you were meeting
8 with the attorney that had been representing you
9 for some underlying criminal charges, Joe
10 Terranova; is that right?

11 A. What was the date, because I did not
12 hear the date?

13 Q. March 9, 2018.

14 A. That's correct, I was meeting with my
15 attorney, Joseph Terranova.

16 Q. And you had recently been convicted of
17 some crimes that Mr. Terranova had been
18 representing you for?

19 A. Yeah. Well, you already asked me that
20 question, I gave you the charge and it had to do
21 with Mr. Terranova, yes.

22 Q. Well, I am not talking about the most
23 recent criminal conviction, I am asking about the

MR. DUBLINO - MS. MOLISANI - 6/7/2021

17

1 charges that Mr. Terranova had been representing
2 you for, the trial that was in front of Judge
3 Haendiges?

4 A. Okay, yes, sorry. You didn't specify
5 that. Okay.

6 Q. Okay, so am I correct --

7 A. What was the question again?

8 Q. Sure. Mr. Terranova had been
9 representing you for some charges that you were
10 recently convicted of in March 2018; is that right?

11 A. That is correct.

12 Q. Okay. And how long had you been
13 meeting with Mr. Terranova that day before the
14 assault occurred?

15 A. We were in the room for 40 minutes
16 together --

17 Q. Okay.

18 A. -- approximately, but --

19 Q. Up until the point that you assaulted
20 him, had you, those 40 minutes, been contentious in
21 any way?

22 MR. MODICA: Form.

23 THE WITNESS: I didn't assault him, I want

MR. DUBLINO - MS. MOLISANI - 6/7/2021

18

1 to correct that. I defended myself and basically I
2 want to stipulate that. And what's the next part
3 of that question?
4

5 **BY MS. MOLISANI:**

6 **Q.** Was there any conflict with him that
7 day, in those 40 minutes that you were meeting with
8 him?

9 **A.** Yes, there was a conflict.

10 **MS. MOLISANI:** And Steve, I don't know what
11 your position is on me asking about that, because I
12 don't know if it's privileged, but if you don't
13 want me to ask him that, that's fine.

14 **MR. MODICA:** Yeah, I think because that
15 other charge is still in appeal, I am going to
16 direct the witness not to answer those questions,
17 and obviously the events of this case occurred
18 after that interaction, whatever that interaction
19 was, so on that end, I'd be grateful for that.

20 **MS. MOLISANI:** Sure.

21 **MR. MODICA:** Thanks.
22

23 **BY MS. MOLISANI:**

MR. DUBLINO - MS. MOLISANI - 6/7/2021

19

1 Q. And am I right that about nine days
2 after the incident on March 9, 2018 -- excuse me,
3 strike that. You had sued Mr. Terranova about nine
4 days before the March 9, 2018 incident; is that
5 right?

6 A. I -- I missed the question. I pursued
7 him?

8 Q. Sued him. You made a lawsuit, filed a
9 lawsuit against him?

10 A. Is that what your question is?

11 Q. Yes.

12 A. I didn't hear the question.

13 Q. Okay.

14 A. I put a federal lawsuit against Mr.
15 Terranova, correct. Out of the -- out of the
16 district court, the Western District Court for an
17 issue that took place within the courtroom of
18 Deborah Haendiges. There was five claims in this
19 suit. He is -- his issue was one of them --

20 Q. Okay.

21 A. -- along with four other claims in that
22 suit.

23 Q. I am sorry, I thought you were done.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

20

1 **A.** The claim against Mr. Terranova was
2 that he threatened me inside the courtroom and I
3 objected to it when he did that and the
4 stenographer failed to record that information on
5 my objection, they haven't represented me as an
6 attorney. This was before the voir dire on January
7 17th, 2018.

8 **Q.** All right.

9 THE WITNESS: I'm sorry, Steve, did you say
10 something?

11 MR. MODICA: I did not.

12 THE WITNESS: Okay, so January 17th, 2018 he
13 threatened me inside the courtroom and basically I
14 made an objection to the -- to the judge, who was
15 right in front of it while he did this and
16 basically I made an objection to replacing him
17 right there, the stenographer was in the room, and
18 they failed to place my motion on the record. Do
19 you need to have the information that transpired?

20

21 **BY MS. MOLISANI:**

22 **Q.** No. Thank you.

23 **A.** Okay.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

21

1 Q. Going back to the morning of March 9,
2 2018, did there come a time in the
3 attorney-conference room where your body came into
4 contact with his?

5 A. Oh, God, it's so hard to hear you. Go
6 ahead with the question again. I am trying to
7 concentrate. Are you turning it up? Okay.

8 Q. Okay.

9 A. Go ahead.

10 Q. I said going back to the morning of
11 March 9, 2018, did there come a time where your
12 body came into contact with Mr. Terranova's?

13 A. Before March 9th?

14 Q. The morning of March 9th.

15 A. Before the actual alleged incident?

16 Q. No. Well, I guess I am not sure what
17 you mean by alleged incident. I just generally
18 want to know on March 9, 2018, did there come a
19 time where your body came into contact with Mr.
20 Terranova's?

21 A. Yes, approximately -- approximately
22 10:20 a.m.

23 Q. Did you strike Mr. Terranova?

MR. DUBLINO - MS. MOLISANI - 6/7/2021

22

1 THE WITNESS: Okay, Steve, I thought we
2 weren't going to go into that issue. Are we -- are
3 we going forward with this?

4 MR. MODICA: Well, again, you can choose not
5 to answer, you know. Obviously I don't think
6 there's a dispute that there was physical contact
7 between you and Mr. Terranova. The issue in your
8 criminal case is whether your physical -- your
9 physical conduct was justified. So that's why I
10 didn't object to that particular question, but the
11 other questions I might object to, but --

12 THE WITNESS: Okay, repeat the question
13 then, Ms. Molisani.

14

15 BY MS. MOLISANI:

16 Q. Did you strike Mr. Terranova?

17 A. I defended myself after he struck me.

18 Q. Right. And in defending yourself, did
19 you strike Mr. Terranova?

20 A. I did not strike him, no.

21 Q. In what manner did your body come into
22 contact with his?

23 A. I basically grabbed his arm when he

MR. DUBLINO - MS. MOLISANI - 6/7/2021

23

1 jabbed his pen in me, at my hand and poked my hand,
2 and then after he hit me on the side of the head
3 twice with his left arm, I basically defended
4 myself. I got up and I was blocking myself, and as
5 I was blocking myself, I was pushing him up against
6 the wall and I put my fingers into his eyes to
7 defend myself, disarming him of his pen.

8 Q. Did you put your fingers in his eyes
9 just once?

10 A. I kept pressure on -- with my hands
11 over his face and over his eyes as we fell towards
12 the wall where the emergency -- not the emergency,
13 where the notification button is to the -- to the
14 tower.

15 Q. Okay. Did any -- at any point that
16 morning did any deputies enter the attorney
17 conference room?

18 A. No.

19 Q. All right. So according to your
20 complaint, you say that Deputy Thompson arrived
21 first at -- in the inmate side of the hall; is that
22 correct?

23 A. Yes, the first officer with his K-9.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

24

1 Q. Can you describe for me what he did
2 when he arrived?

3 A. I was standing at the door ready to
4 walk out, waiting for the door to open up. Once it
5 clicked, they open it up and I walked towards the
6 door and he grabbed me by my shirt, but he didn't
7 pull me out, I walked out on my own will, own
8 free-will. He basically had ahold of my shirt.
9 That's pretty much as I exited.

10 Q. Can you describe for me what actions
11 Mr. Thompson took that I guess formed the basis of
12 your complaint against him?

13 A. I am sorry?

14 Q. Can you describe for me what actions
15 Deputy Thompson took that form the basis of the
16 complaint against him?

17 A. Yeah, basically, there's a -- there's a
18 few things. I followed his order to sit down on
19 the ground. That's what -- that's what his first
20 order was, so I sat down on the ground. And then
21 he immediately said no, I want you facedown on the
22 ground in a prone position. He was cursing while
23 he was doing this. And at me to do it, get down on

MR. DUBLINO - MS. MOLISANI - 6/7/2021

25

1 the fucking ground, and I did all of those things.
2 I conceded and did not resist. He testified to
3 that. You were there in the courtroom when he
4 testified to that.

5 Q. Did Deputy Thompson use force against
6 you?

7 A. Did he use force against me?

8 Q. Yes.

9 A. Well, what -- what he did was, he was
10 concentrating on my upper body and he lost control
11 of his dog. His dog was biting at my leg. His K-9
12 dog was biting at my leg and I ended up trying to
13 protect my leg because he was up on my upper back
14 now, I am protecting my leg with my right hand
15 while he was biting at my leg. The dog ended up
16 biting my hand, my right hand.

17 Q. I am sorry, the dog bit your right hand
18 or your leg or both?

19 A. My right hand. My right hand.

20 Q. So the dog did not bite either of your
21 legs?

22 A. He was biting at my leg. He was biting
23 at my leg, at my upper thigh and at my buttocks.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

26

1 My -- and then that's where my hand was, so I put
2 my hand there, you know, to shoo him away and then
3 he bit my hand too. The officer was pressing down
4 on my back, okay. He was -- he didn't try to
5 handcuff me at all and basically he was using extra
6 force on my back.

7 Q. Can you describe what he was doing on
8 your back?

9 A. Leaning on my back. I don't know, I
10 was facedown, but my back -- he was on my upper
11 part of my body.

12 Q. And you described trying to shoo the
13 dog away, so were you moving as Deputy Thompson was
14 leaning on your back?

15 A. I'm sorry?

16 Q. You have described that you were trying
17 to shoo the dog away, so I am asking if you were
18 moving as Deputy Thompson was leaning on your back?

19 A. I was like -- I was facedown. They
20 just -- I just explained it to you, the dog was
21 biting at my leg and --

22 THE WITNESS: Go ahead, Steve what did you
23 say?

MR. DUBLINO - MS. MOLISANI - 6/7/2021

27

1 MR. MODICA: No, so Mark, if I mute or
2 unmute, you're going to hear a little beep, so I am
3 trying to stay muted so that I am not adding extra
4 noise back here, so if you hear that, that's not me
5 saying anything, that's just the muting mechanism,
6 all right. I will certainly speak up when I need
7 to, all right?

8 THE WITNESS: Very good.

9 MR. MODICA: Okay.

10

11 BY MS. MOLISANI:

12 Q. So is it accurate you were moving as
13 Deputy Thompson was leaning on your back?

14 A. I was laying down facedown. I wasn't
15 moving anywhere. I was moving my arm to protect --
16 I was just basically, it's a natural reaction to,
17 just to push away, and he was on my back, so I am
18 just showing you so you can see, so if I am
19 facedown, I am shooing away. You can't see my arm,
20 but basically it was down by my buttocks where my
21 arms are. The length of my arm.

22 Q. All right, so you just put your arm
23 straight back, almost as if -- it looks like you

MR. DUBLINO - MS. MOLISANI - 6/7/2021

28

1 were maybe partway to a position you would take to
2 be handcuffed behind your back, is that an accurate
3 description of what you just did with your body?

4 A. Correct, if your hands are to the side,
5 you know, and then eventually you're going to be
6 handcuffed, you know, so they're going -- only
7 going to go a short distance from where they are on
8 the side.

9 Q. Okay. The dog was leashed; is that
10 correct?

11 A. Yes, he was.

12 Q. Did there come a time where Deputy
13 Thompson did not have -- was not holding the leash?

14 A. It didn't appear. He had to have the
15 leash, because the dog was not in the camera, not
16 in the surveillance. He wasn't in the surveillance
17 camera, but the dog is there because you see him
18 running. You see him running.

19 Q. I guess --

20 A. I don't know what's going on. Am I
21 getting back -- back noise? He was running down
22 the hallway with the dog, so we know the dog is
23 there, but the camera, surveillance camera doesn't

MR. DUBLINO - MS. MOLISANI - 6/7/2021

29

1 cover the entire view of the corridor. For some
2 reason this is two to three feet from the ground
3 up, so you don't see the dog and that's why you
4 don't see the dog in the photos, but you see the
5 dog in the video until he's out of the -- out of
6 the video screen.

7 Q. I understand that. I guess what I am
8 trying to get from you is whether, if you know, the
9 dog, if the dog leash was ever out of Deputy
10 Thompson's hands? And if you don't know, that's
11 fine too.

12 A. Oh, I don't know.

13 Q. Okay. You're not claiming that the dog
14 was instructed to bite you, are you?

15 A. No.

16 Q. Did Deputy Thompson handcuff you?

17 A. I -- I don't know, I was facedown.

18 Q. And what's your recollection of how
19 many times you were bitten by the dog?

20 A. He was biting at my leg and he bit my
21 hand the one time and then -- and then the other
22 officers got there, they were grabbing my hand and
23 arms, bending my arms behind my back, so I don't

MR. DUBLINO - MS. MOLISANI - 6/7/2021

30

1 know after that point. There was additional
2 officers that were on the scene now.

3 Where the excessive force is, is that Deputy
4 Thompson had control of me down on the ground. He
5 could have called off the dog, no pun intended, off
6 the dogs that were running down on me, which was
7 about six, six or seven deputies and he didn't do
8 any of that.

9 Q. Just to clarify, when you say call off
10 the dogs, you're not talking about the narcotic
11 dog, you're talk about the other deputies?

12 A. That's correct.

13 Q. Okay.

14 A. They were running, they ran down the
15 hall. It's in the video. And basically they ran
16 down on the hall out of control, jumping on me and
17 doing whatever. I don't know who had my arms or
18 who didn't have my arms, but there was six officers
19 on top of me because they're on the screen, there's
20 nowhere else they could be but on the top of me,
21 because the camera has a full view of the room, of
22 the hallway, excuse me, the four foot wide hallway,
23 except for two to three feet, so everybody had to

MR. DUBLINO - MS. MOLISANI - 6/7/2021

31

1 be on top of me at some part of my body.

2 Q. Okay. The next person that I want to
3 talk about is Sergeant Biegaj?

4 A. That's correct. Yeah.

5 Q. Can you describe for me what he did?

6 A. Well, just from reviewing the video,
7 and this is how I can recollect, that he came -- he
8 was the first officer to arrive after Deputy
9 Thompson and he went down on his knees on my back
10 and one of his knees must have struck the floor.

11 Q. Went down on his knees, did you say on
12 your back?

13 A. Yes.

14 Q. Do you know which of his knees was on
15 your back or was it both?

16 A. I was facedown, I don't know. I am
17 only going by with the film, what's in the film and
18 on the film. He was jumping. You could see he was
19 jumping and then a couple minutes later, a couple
20 seconds, not minutes, a couple seconds later he's
21 -- he's hopping around down the hallway supposedly
22 with some type of injury from -- from falling on
23 his knee.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

32

1 Q. Okay. And you were facedown when this
2 occurred; is that right?

3 A. That is correct.

4 Q. Okay. And so how was it that you know
5 that it was Sergeant Biegaj who did this?

6 A. The film. I watched the video. I put
7 together twelve felony complaints and I submitted
8 it to the district attorney's office of what they
9 did, because I was already in the prone position
10 and he certainly wasn't reaching down to handcuff
11 me. He was -- he's jumping down. You can see he's
12 running down on me.

13 Q. Did you know Sergeant Biegaj before
14 March 9, 2018?

15 A. I certainly did.

16 Q. What about Deputy Thompson, did you know
17 him before the date of this incident?

18 A. Deputy who?

19 Q. Thompson.

20 A. Did not. Never interacted with Deputy
21 Thompson.

22 Q. And have you described everything that
23 Sergeant Biegaj did that you claim was excessive

MR. DUBLINO - MS. MOLISANI - 6/7/2021

33

1 force?

2 A. Yeah, he put his knee on my back when I
3 was in a prone position.

4 Q. Your complaint then says that Deputy
5 Shawn Wilson and Sergeant Dee grabbed your hands
6 and arms and were bending and twisting them in an
7 abnormal fashion; is that accurate?

8 A. Yeah.

9 Q. Okay. Did you know Deputy Wilson and
10 Sergeant Dee before the date of this accident -- or
11 excuse, me incident?

12 A. I knew Sergeant Dee. I also knew
13 Deputy Wilson, but no interaction. But I had
14 interactions with Sergeant Dee.

15 Q. Okay, can you break it down for me
16 between those two individuals, who did what?

17 A. I was facedown. They were -- they were
18 part of the report, the report that I read for the
19 disturbance. They were saying that they were
20 grabbing my arms. Only takes about, if you're in a
21 prone position and your hands are behind the back,
22 you only need to put the handcuffs on, it takes
23 about five seconds to put the handcuffs on you and

MR. DUBLINO - MS. MOLISANI - 6/7/2021

34

1 then pick you up. I was down on the ground for a
2 minute, 20 seconds facing down.

3 Q. What report are you talking about?

4 A. I'm sorry?

5 Q. What report are you talking about? You
6 said that it was in the report?

7 A. The -- Sergeant Smaziak, he's the
8 investigative reporter, he did a report on -- on
9 each one person and who grabbed what and how they
10 grabbed my arms and, you know, how they picked me
11 up. It was in -- it's in his report.

12 Q. Are you talking about the Erie County
13 Sheriff's Office Inmate -- or excuse me, Incident
14 Report?

15 A. It's an incident report, yeah. I mean,
16 again, like I said, I don't have that in front of
17 me --

18 Q. I understand.

19 A. -- but I know that Sergeant Smaziak put
20 it together.

21 Q. All right. And does -- well, strike
22 that. Can you describe for me what Shawn Wilson
23 did that twisted your arms in an abnormal fashion?

MR. DUBLINO - MS. MOLISANI - 6/7/2021

35

1 A. Again, the handcuffs were -- were not
2 put on me right away, then they put them on me,
3 okay, and then they said take them off, put them on
4 the other way. So not only did they put the
5 handcuffs on me, but they twisted the arms around,
6 okay, and did them the opposite direction bending
7 my shoulders back, which forces you in another
8 position.

9 Now, while this is all happening, they're on
10 top of me, and if you can picture this, okay,
11 because I'll never forget it, is that you're in a
12 prone position, you're down and there's about six
13 guys who weigh about 200 plus, 220 pounds each on
14 average, and I can't breath while this is all
15 happening, and I know what they're doing and I am
16 saying, I can't breath, I can't breath, you have
17 got to get off of me, okay, and they're doing this
18 and they put the handcuffs on and I hear someone
19 say, take them off, put them on again, put them on
20 the opposite way, and that's what they did, they
21 put them on the opposite way. That's how I ended
22 up with the markings on the opposite side of my
23 wrists.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

36

1 Q. What do you mean, put them on the
2 opposite way?

3 A. Well, if your hands are behind your
4 back in a normal position, your palms will be
5 facing out in a normal, behind you. If you put
6 your hands behind your back, you'll see what I am
7 talking about. Put -- why don't you try it.

8 Q. No, thank you.

9 A. Put your -- you don't want to, okay,
10 yeah, because it's uncomfortable.

11 Q. I understand what you're saying.

12 A. Now -- now I want you, if you could do
13 it, put your hands, now your hands are against your
14 back, your palms are now not out anymore, facing
15 out, they're facing in. That's means they're
16 reversed, okay, that's what I'm talking about. So
17 they reversed the hands and the arms. They twisted
18 them out. They twisted them around.

19 Q. Okay, so did they remove all the
20 handcuffs and then the reapplication, did that
21 occur in that minute and a half that you said that
22 you were on the ground?

23 A. That is correct.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

37

1 Q. Okay. And the abnormal fashion, you're
2 -- you're talking about flipping your hands in the
3 opposite direction that they had been?

4 A. As I just said, the palms, your natural
5 motion with your arms behind your back, your palms
6 are out, okay. And if you flip your hands, and now
7 your hands are behind your back, you'll see that
8 the -- it's not normal and basically that's the
9 reason why they did it is because now they can --
10 they had the pressure of the handcuffs against the
11 bone of my wrists.

12 Q. Okay. Do you know who instructed the
13 handcuffs to be flipped around?

14 A. I -- I know his voice, you know, there
15 was plenty of thing going on, but I am almost very,
16 very certain that it was Sergeant Robinson.
17 Sergeant Robinson is the person who said take the
18 cuffs off, put them on the other way.

19 Q. Okay.

20 A. And I know his voice because I have
21 heard Sergeant Robinson many times. Many, many
22 times.

23 Q. And so who took the cuffs off and put

MR. DUBLINO - MS. MOLISANI - 6/7/2021

38

1 them on the opposite way?

2 A. I don't know, my face was facedown. I
3 don't know.

4 Q. Well, what I am trying to get at is,
5 what the claims against Shawn Wilson and Sergeant
6 Dee are, and you have described bending and
7 twisting your arms in an abnormal fashion in the
8 complaint, and so I want to get the information
9 about what the claims are against those two
10 individuals?

11 A. I just said. I just said, I'm in a
12 prone position for a minute and 20 seconds. It
13 takes five to ten seconds at the most to put
14 handcuffs on, okay, and if that's the case, then
15 what were you doing for a minute and 20 seconds
16 while -- while the defendant is defenseless. While
17 the, excuse me, the plaintiff is defenseless.
18 Myself as being the plaintiff. Defenseless and
19 they're putting the cuffs on and taking them off
20 and they're bending the arms back. That's all I
21 can tell you.

22 Q. And that was Shawn Wilson and Sergeant
23 Dee that did that?

MR. DUBLINO - MS. MOLISANI - 6/7/2021

39

1 **A.** The officers that were in the screen
2 that were on top of me and then disappear, were
3 Deputy Thompson, Deputy Biegaj, Sergeant Dee,
4 Deputy Wilson, Sergeant Robinson and Deputy
5 Scarpace, which should have been listed, but I
6 didn't have his name at the time. Those people
7 were -- there were six individuals on top of me.

8 **Q.** All right, so it sounds like you did
9 like a process of elimination and went by the video
10 and who was off camera at the time that you were
11 -- that you believe that you were handcuffed based
12 on the cameras; is that right?

13 **A.** It has to be. They were there and then
14 they were -- then they weren't there. They didn't
15 run down the hall because the camera would have
16 picked them up in the hall. They had the view of
17 the camera -- the view of the cameras shows the
18 length view of the hallway, so -- and it has two
19 cameras going and coming. They're not inside --
20 they're not -- they're not down the hall. They're
21 not running down the hall. They have to be on top
22 of me where the camera is completely shielded for
23 that two to three feet section of the four foot

MR. DUBLINO - MS. MOLISANI - 6/7/2021

40

1 area.

2 Q. Regarding Sergeant Cross, you claim he
3 was stomping on your feet and legs; is that
4 correct?

5 A. Based on the camera. Based on the
6 camera view, you can see Sergeant Cross rocking.
7 He's not standing there watching, he's actually
8 rocking. You can see him moving side to side,
9 okay. Somebody was stepping on my feet. He was by
10 my feet. Later he decides to move in on top of me
11 too and then he disappears. He's six foot six and
12 he completely disappears. Again, he's not running
13 down the hall, he's not walking down the hall, he's
14 on top of me doing something. I don't know, I'm
15 facedown.

16 Q. Okay. You say in the complaint that
17 after the restraints were applied, you couldn't
18 breath due to pressure on your back. Do you --
19 restraints, meaning handcuffs, just to be clear
20 about that?

21 A. I'm sorry?

22 Q. The restraints, referring to handcuffs;
23 is that correct?

MR. DUBLINO - MS. MOLISANI - 6/7/2021

41

1 A. They're handcuffs.

2 Q. I just want to make sure we're clear,
3 restraints, that I knew what you were talking
4 about?

5 A. Restraints are handcuffs. That's what
6 they put on my wrists.

7 Q. All right.

8 A. Metal handcuffs.

9 Q. And was it just Justin Biegaj that was
10 putting the pressure on your back?

11 A. No, Justin Biegaj, he jumped on me with
12 his knee. With his knees. He was the one who came
13 down first on my knees. He ended up -- this is how
14 I know, he's the one that ends up walking down the
15 hallway away from me jumping up and down,
16 supposedly he twisted his knee or banged his knee
17 against the tile when his -- one of his knees hit
18 the tile. He stated that on his testimony too.

19 Q. But I want to know who was putting the
20 pressure on your back?

21 A. Thompson. Deputy Thompson, Sergeant
22 Dee, Sergeant Robinson, Sergeant -- or Deputy
23 Scarpace, Deputy Wilson.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

42

1 **Q.** And is that -- that's, again, based on
2 the video and seeing them outside of the camera
3 view; is that correct?

4 **A.** Yeah, if the cameras were positioned
5 better, there would be better transparency.
6 There's no transparency. The cameras were not in
7 position to pick up all of the activity for
8 whatever reason. The cameras are there for a
9 reason and they didn't -- they did not pick up the
10 entire action. It's almost like they -- that's a
11 practice, if all the cameras are all filmed, but
12 you don't -- you always have an area where there's
13 nothing, and if you are facedown, you can't be
14 picked up. There's no camera. If that's their
15 procedure, that could be considered deliberate,
16 because if I didn't resist, all they had to do was
17 turn me around put my handcuffs on.

18 **Q.** How long was there pressure on your
19 back for?

20 **A.** How long were they on for?

21 **Q.** How long was the pressure on your back?

22 **A.** How long what?

23 **Q.** Was the pressure on your back?

MR. DUBLINO - MS. MOLISANI - 6/7/2021

43

1 A. How long was the pressure. I was --
2 they -- I had complete pressure. I couldn't even
3 breath.

4 Q. My question was how long?

5 A. I was gasping for air. How long?

6 Q. Yes.

7 A. Up until I was picked up. They finally
8 picked me up. They had pressure on my back the
9 entire time, a minute and 20 seconds.

10 Q. You then talked in your complaint about
11 an hour later your arms were wrenched?

12 A. Again, because I was speaking to -- I
13 spoke to Sergeant Robinson many times through my
14 custody there, I could hear him, wrench him, wrench
15 him, which is a wrenching tactic to bend the cuffs
16 and the hands and the arms into the cuffs, by
17 bending the wrists, you're bending them into the
18 cuffs.

19 Q. And where was it that that happened?

20 A. It happened throughout -- it happened
21 throughout the corridors all the way over to the
22 infirmary, and then in the infirmary they did it
23 again in front of the nurses.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

44

1 Q. And did you sustain any injuries in the
2 incident on March 9, 2018?

3 A. I did have injuries. I was never -- I
4 was never examined by the facility. Everything was
5 kept in-house. I had been taken take Erie County
6 Medical Center before and they would not take me to
7 the Erie County Medical Center to put a cross
8 complaint in and to be evaluated on what they just
9 did.

10 Q. When you say you were never examined at
11 the facility, what facility are you talking about,
12 ECMC?

13 A. Erie County -- Erie County Holding
14 Center was -- they had a nurse practitioner there
15 who all she did was take my blood pressure. And
16 actually, one of the photos shows the blood
17 pressure, what my blood pressure was. There was --
18 one of the photos actually shows what my blood
19 pressure was. I can pull it out and tell you what
20 it was after being pressed down on the ground
21 because it's right on the printout.

22 Q. I am sorry, we skipped over a couple of
23 people. You have a claim against Mr. -- Deputy

MR. DUBLINO - MS. MOLISANI - 6/7/2021

45

1 Gelster. Can you describe for me what he did that
2 you're claiming as excessive force?

3 A. Deputy Gelster was -- in the infirmary,
4 he seemed to be escorting me with Deputy Peter
5 Giardina and they basically were behind me on the
6 photos that were taken of me while they were taking
7 photos of my face and side views, right and left
8 side views, along with my hands, and while they
9 were doing this, they were being instructed by
10 Sergeant Robinson to wrench him, and that's why I
11 reacted in pain again, because they were -- they
12 were bending the wrists into the cuffs, and they
13 did so, and you can see their eyes in the photo,
14 it's very clear that they're looking off while
15 they're -- while this is happening. And it was
16 coming from -- it was from Sergeant Robinson, who
17 was out of the photo picture, off adjacent to where
18 I was sitting.

19 Q. After the handcuffs were -- were
20 removed and then put back on in the more
21 uncomfortable position that you described, at any
22 point were they flipped back to the more
23 comfortable way with your palms up?

MR. DUBLINO - MS. MOLISANI - 6/7/2021

46

1 A. They took them off only to take
2 pictures of my hands and then they put them back on
3 the same way, in the reversed -- in the reversed
4 opposite direction of what your -- what would be
5 normal. Meaning, reversed that your palms are
6 facing out. Excuse me, palms are facing in. Palms
7 are facing in in the unnatural position versus the
8 natural position where your hands are facing out.
9 They cuffed them back with the palms facing in
10 towards your buttocks.

11 Q. You have described for me that you were
12 not examined at ECMC as you wanted to be and I
13 guess I want to go back to that line of questioning
14 and ask you, irrespective of where you were seen,
15 did you sustain any injuries in this --

16 A. Yes.

17 Q. Let me just finish the question.

18 A. Yes, I did have injuries. I put in --
19 I put in medical -- I put in medical slips. They
20 would not take me to Erie County Medical Center.
21 They wanted to keep it in-house.

22 Q. What I want to know is what your
23 injuries are?

MR. DUBLINO - MS. MOLISANI - 6/7/2021

47

1 A. My injuries were to my wrists, to my
2 arms, to my back, to my shoulders.

3 Q. Can you describe those injuries,
4 please?

5 A. Well, the wrists were -- were totally
6 -- they were almost in a sprain. I don't even
7 know, there might have been a small fracture, I
8 have no idea. No X-rays were ever taken. But my
9 wrists, I could barely move my wrists when they put
10 me in the holding cell in Gulf East. And my arms,
11 I couldn't even move my arms. And my shoulder, I
12 still have pain in my shoulder. My deltoid muscle
13 still is in pain from that day. I can't -- I don't
14 have any hardly strength to lift my arm up. I can
15 barely lift it up without pain in the deltoid.

16 You know, my back, you know, my back was in
17 bad shape. I had no medical. They did no medical
18 examination, okay, of me. So there's no way to
19 know whether or not I was hurt. They did not do a
20 medical evaluation of me. They did not take my
21 clothes off and take pictures with me naked. They
22 didn't do anything. They put me -- they put me
23 back into a cell and they would not allow me to go

MR. DUBLINO - MS. MOLISANI - 6/7/2021

48

1 to the Erie County Medical Center, which is over on
2 Grider Street.

3 They took me over there before when I was
4 attacked by another inmate on October 29th. So
5 they kept it in-house. They would not take me out
6 of the facility. And they did not take X-rays.
7 They did not provide ice for me. I asked for ice
8 for the swelling.

9 Q. Where was your swelling?

10 A. I don't know what else to say. Huh?

11 Q. Where was your swelling?

12 A. Where is my stomach?

13 Q. Where was the swelling?

14 A. The swelling. The swelling was in my
15 wrist. In my wrist. In my wrist. And the pain
16 was in my back and shoulders.

17 Q. And you have been incarcerated now
18 three different places since the Erie County
19 Holding Center; is that correct?

20 A. I was incarcerated there 21 months. Is
21 that your question?

22 Q. No, my question is, since March 9,
23 2018, you have been incarcerated at three different

MR. DUBLINO - MS. MOLISANI - 6/7/2021

49

1 locations since the holding center, correct?

2 A. Yes. And a few days over at Attica.

3 Q. So at any point since March 9, 2018,

4 have you received medical treatment for your

5 wrists, arms, back or shoulders at any of the

6 facilities that you have been incarcerated at?

7 A. No, I haven't. Everything healed the
8 way -- the way it was. I was at the Erie County
9 Holding Center for two weeks by the way, and they
10 did not take me to the hospital for two weeks,
11 until I was removed. So the incident happened on
12 the 9th and I stayed in the holding cell until the
13 23rd when I was sentenced and then they drove me
14 out, drove me to Elmira.

15 Q. I am going to show you -- all right, I
16 am going to show you what we have marked as Exhibit
17 2 --

18 A. Yeah.

19 Q. -- with today's date on the top right
20 corner, can you see what I am showing you?

21 A. It's today's date, 6/7/21.

22 Q. But can you see what I am showing you?

23 A. Yes.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

50

1 Q. All right. And does this first page of
2 Exhibit 2 appear to be a medical note signed by
3 Hend Habir, H-A-B-I-R?

4 A. Yeah.

5 Q. All right. And it looks like it's an
6 examination that you were seen for complaints of
7 pain in your bilateral hands, right hand middle
8 knuckle slightly swollen with erythema. Inmate
9 able to make fist, able to move fingers, capillary
10 refill less than two seconds. Left hand slightly
11 swollen around knuckles with erythema, able to move
12 fingers and close fist. Capillary refill less than
13 two seconds. No other injuries noted to hands. Do
14 you see that?

15 A. Well, I don't see the -- exactly the
16 writing, but you're reading it to me.

17 Q. Okay. I mean, have you seen a note
18 that sounds like what I just read to you?

19 A. Okay, but the pain in the hands, right
20 hand middle knuckle slightly swollen with -- okay.
21 Able to make a fist. Able to move fingers. Less
22 than two seconds. Left hand slightly swollen,
23 okay. Able to move fingers. Close fist. Other

MR. DUBLINO - MS. MOLISANI - 6/7/2021

51

1 injuries noted to hands. Also mid to lower back.
2 Right side pain. Say skins -- skin -- okay, no
3 injury noted to entire back/side/ chest. Clear.

4 Okay. All right, so you're saying that that
5 was his report. I am saying that -- I am saying
6 that the report is false. That's what I'm telling
7 you.

8 Q. Okay. And just for purposes of the
9 record, this is dated 3/9/18 at 7:52 p.m.; is that
10 something you can see?

11 A. I can see it, yeah. Yeah.

12 Q. Okay. And are you saying you weren't
13 examined at that time or the contents are false?

14 A. I am saying -- I am saying that, I am
15 telling you right now, that all they did was they
16 talked to me, they never examined me. And that's
17 on film, where they had me at the holding cell in
18 Gulf East and that footage should have been saved
19 and it wasn't.

20 Q. Okay, so you're saying that you did
21 meet with somebody, but just the contents of --

22 A. Yeah, I --

23 Q. Mr. Dublino, let me finish. You need

MR. DUBLINO - MS. MOLISANI - 6/7/2021

52

1 to let me finish the question, please.

2 A. Okay, go ahead.

3 Q. Thank you. So you're saying, am I
4 paraphrasing this correctly, that you were seen by
5 an RN at that point, but the contents of there
6 being an examination as contained in Exhibit 2 is
7 not accurate, do I have that right?

8 A. Yeah, because I remained handcuffed.
9 When they walked me to -- there was like a little
10 room in Gulf East where they put everybody in keep
11 lock over at the Erie County Holding Center, they
12 walk you over there handcuffed and you stay
13 handcuffed and I was -- they -- nobody examined me
14 at all. I stayed handcuffed. I never -- I never
15 left the call un-handcuffed.

16 Q. Do you see --

17 A. They never examined me.

18 Q. Do you see on Exhibit 2 where it says
19 IM offered no other complaints?

20 A. Like I said, I -- I put in three
21 medical sick requests and they never examined me
22 and they never gave me X-rays.

23 Q. My question is, do you see on here

MR. DUBLINO - MS. MOLISANI - 6/7/2021

53

1 where it says IM offers no other complaints?

2 A. Inmate offers no other complaints,
3 yeah.

4 Q. Yes, you see that?

5 A. I never -- yes, I do. Yeah.

6 Q. Did you complain at that time about the
7 injuries you described to me, in the wrists, arms,
8 back, was obviously covered in this, and shoulders?

9 A. Yes, I did.

10 Q. Okay. I will show you page 2 of
11 Exhibit 2, which is a Refusal of Recommended
12 Medical Care dated 3/10/18. Do you see what I am
13 showing you on my screen?

14 A. Yeah. Yeah, I see. I wrote at the
15 top, and you can see how I couldn't even barely
16 hold a pen, I am not refusing medical care. I am
17 being denied a visit to the hospital. Medical
18 exams already were done and I had stated, take me
19 to the hospital. The medical exams were visual.
20 That's the exam they gave me. Now they're saying I
21 -- inmate refused to get out of bed for assessment
22 on the housing unit. The reason being he did not
23 want to get out of bed to be seen. Yesterday he is

MR. DUBLINO - MS. MOLISANI - 6/7/2021

54

1 -- he should -- so he wants to go to the hospital.

2 I think it says he should go to the hospital.

3 Sergeant Weber present for assessment of attempt,

4 instead wrote no, refused to sign the refusal form.

5 Q. All right, so on Exhibit 2, page 2
6 where -- is this your handwriting that says medical
7 exams were already done and I stated take me to the
8 hospital?

9 A. Yeah.

10 Q. Is that your handwriting?

11 A. That's my writing too, yes.

12 Q. Okay. So as of March 10th, 2018,
13 medical exams were already done; is that correct?

14 A. Medical exams were visual. I am
15 telling you what the exam was, was visual.

16 Q. I am asking you, as of March 10th,
17 2018, you wrote medical exams already done, were
18 already done; isn't that true?

19 A. It says medical exams already were done
20 and I stated, take me to the hospital, okay. I
21 told you what their exam was, is that they took my
22 blood pressure, okay, and they took photos of me.
23 That was their exam. That's it.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

55

1 **Q.** And I'm showing you page 3 of Exhibit 2
2 in which you wanted to go to the hospital, an
3 independent hospital visit. Do you see that first
4 line here on page 3 of Exhibit 2?

5 **A.** Right, that's 3/11, yes. That's 3/11.
6 I am just making sure I have the right one. I had
7 to rewrite it. These sick call requests that were
8 -- were given to me by another inmate. They had to
9 slide it under the door. They wouldn't give me a
10 sick request. This is why I was able to write
11 this.

12 **Q.** Okay.

13 **A.** They weren't giving me pens. There's
14 three of them actually. That's -- that's 3/11 at
15 11:45.

16 **Q.** And you were in keep lock at that
17 point?

18 **A.** Placed three of them. I was in keep
19 lock, correct.

20 **Q.** And you were in keep lock relative to
21 the incident on March 9, 2018; is that right?

22 **A.** I'm sorry.

23 **Q.** You were in keep lock relative to the

MR. DUBLINO - MS. MOLISANI - 6/7/2021

56

1 incident on March 9, 2018; is that right?

2 A. That's correct, yes.

3 Q. I am going to show you what has been
4 marked as Exhibit 1 with today's date on the
5 exhibit sticker, and --

6 A. Yes.

7 Q. -- that document is entitled Erie
8 County Sheriff's Office Administrative Segregation
9 Order Keep Lock Pending Discipline Hearing. Do you
10 see this?

11 A. Yes.

12 Q. And then there's a box checked, you
13 have been classified as a security risk, do you see
14 that?

15 A. Yeah. Yes.

16 Q. And this is signed by Chief Kuppel on
17 March 9, 2018; is that right?

18 A. That's correct, pending a disciplinary
19 hearing, so while you're on that document, no
20 disciplinary hearing was ever conducted.

21 Q. Okay. The second page of Exhibit 1 is
22 a document entitled Erie County Sheriff's Office
23 Jail Management Disciplinary Report, do you see

MR. DUBLINO - MS. MOLISANI - 6/7/2021

57

1 that?

2 A. Yes. Yes, I do.

3 Q. And this report is dated 3/9/18 and it
4 appears that it was -- that the box checked here is
5 Forward to the Disciplinary Committee. Do you see
6 that?

7 A. Yes.

8 Q. Okay. And you're saying that there was
9 no -- nothing ever came of this disciplinary
10 report?

11 A. Yeah. Why don't you slide it up again.
12 Let's zero in and blow it up where it shows you
13 where the inmates are supposed to sign. Go back to
14 the disciplinary report and blow it up right there,
15 inmate's receipt.

16 Q. I can see there's no signature there.

17 A. Yeah, do you see there where it says if
18 you refuse witness statement.

19 Q. Yep, and you did not sign it; is that
20 right?

21 A. Right, because it was never presented
22 to me.

23 Q. Okay.

MR. DUBLINO - MS. MOLISANI - 6/7/2021

58

1 A. When you refuse something, they usually
2 have a witness saying that you refused.

3 Q. I understand.

4 A. Okay.

5 Q. All right, and you were transferred out
6 of the Erie County Holding Center when?

7 A. I'm sorry?

8 Q. You were transferred out of the Erie
9 County Holding Center when?

10 A. I was transferred out of the Erie
11 County Holding Center on March 23, 2018.

12 Q. Okay. So approximately two weeks
13 later, after this incident?

14 A. Two weeks later exactly, yep.

15 Q. So we know from the sick call requests
16 that even in keep lock you had a pen; is that
17 correct?

18 A. They would not give me a pen or the
19 medical slips. As I said, in Gulf East they have
20 cameras and the cells are, I was in a corner cell
21 and the inmate that was over at this corner cell
22 (indicating) asked for sick call slips, sick call
23 requests, and he slid them over to me and slid his

MR. DUBLINO - MS. MOLISANI - 6/7/2021

59

1 pen over to my cell, sliding it over. That's the
2 only reason why I was able get a pen, otherwise
3 would have never had sick call requests made.

4 Now they told me after, I wanted to fill out
5 additional slips and grievances and they would not
6 allow him to give me any more pens. They said do
7 not slide him any more pens. They didn't even give
8 me a grievance form.

9 Q. Did you file a grievance against any of
10 the deputies involved in this incident?

11 A. They never would give me a grievance
12 form.

13 Q. When did you ask for a grievance form?

14 A. Immediately.

15 Q. On March 9, 2018 or some point after
16 that?

17 A. The 9th, when I first -- when they
18 first threw me into keep lock I was asking the
19 officers that were working the floor to get me a
20 grievance and they didn't.

21 Q. You were aware of the grievance
22 procedure; is that correct?

23 A. I'm sorry?

MR. DUBLINO - MS. MOLISANI - 6/7/2021

60

1 Q. You were aware of the grievance
2 procedure; is that correct?

3 A. Oh, yes. Yes. Yes.

4 Q. At any point after March 9, 2018, but
5 before you were transferred, in those two weeks you
6 were still at the holding center, did you file any
7 grievances for any issues?

8 A. As I said, they would not give me a
9 pen. I had to borrow the pen. They would not give
10 me a grievance form. I had no paperwork. They
11 didn't even give me my legal material for about
12 almost a week. They -- they gave me nothing. I
13 had nothing. Nothing.

14 Q. My question is, did you --

15 A. Like I said --

16 Q. My question is, the two weeks after
17 this incident, but before you were transferred, did
18 you file a grievance for any issue at the holding
19 center?

20 A. They wouldn't -- I was not -- they did
21 not give me the paperwork to provide for
22 grievances.

23 Q. So your answer is no?

1 **A.** That's correct, no, I did not. They
2 didn't provide it for you. When you're in keep
3 lock, you don't have free movement. You have to be
4 provided the form and that's under camera too.
5 That's all surveillance footage.

6 MS. MOLISANI: All right, I am all set.
7 Thank you for your time.

8 THE WITNESS: All right.

9 MR. MODICA: Thank you, Erin.

10 MS. MOLISANI: Thank you.

11

12 (Whereupon, the deposition concluded at 11:22 a.m.)

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1 STATE OF NEW YORK)

2) ss.

3 COUNTY OF ERIE)

4

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6 I, Denise C. Burger, Notary Public, in and
7 for the County of Erie, State of New York, do
8 hereby certify:

9

10 That the witness whose testimony appears
11 hereinbefore was, before the commencement of their
12 testimony, duly sworn to testify the truth, the
13 whole truth and nothing but the truth; that said
14 testimony was taken pursuant to notice at the time
15 and place as herein set forth; that said testimony
16 was taken down by me and thereafter transcribed
17 into typewriting, and I hereby certify the
18 foregoing testimony is a full, true and correct
19 transcription of my shorthand notes so taken.

20

21 I further certify that I am neither counsel
22 for nor related to any party to said action, nor in
23 any way interested in the outcome thereof.

24

25 IN WITNESS WHEREOF, I have hereunto
26 subscribed my name and affixed my seal this _____
27 day of _____, 2021.

28

29

30 _____
31 Denise C. Burger,
32 Notary Public,
33 State of New York, County of Erie
34 My commission expires 7/25/23

35

36